

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CURTIS HINDS,

Petitioner,

-v-

No. 12 Civ. 2272 (LTS)(JCF)

ROBERT F. CUNNINGHAM,

Respondent.

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ORDER

Magistrate Judge James Francis has issued a Report and Recommendation (“Report”) recommending that the March 27, 2012, petition of Curtis Hinds (“Petitioner”) for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, be denied. Petitioner’s habeas petition seeks to vacate a judgment of conviction entered against Petitioner by the Supreme Court of the State of New York, New York County, on October 6, 2006. Petitioner also applied for a stay of the decision on his habeas petition while he was pursuing a writ of error coram nobis in state court challenging the effectiveness of his appellate counsel. Judge Francis recommends that Petitioner’s application for a stay of these proceedings be denied as moot and that the petition be dismissed. Neither party has filed objections to the Report. Familiarity with the Report is presumed.

In reviewing a Report, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.S. § 636(b)(1)(C) (LexisNexis Supp. 2013). The Court is only required to make a de novo determination as to the aspects of the Report to which specific objections are made. United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997). Where neither party files timely specific objections to the magistrate

judge's report and recommendation, a district court need only determine that the recommendation is not clearly erroneous or contrary to the law. Arista Records LLC v. Doe, 604 F.3d 110, 117 (2d Cir. 2010); see Fed. R. Civ. P. 72.

The Court has reviewed carefully Judge Francis' thoughtful and well-reasoned Report and finds no clear error. The Court therefore adopts the Report in its entirety and denies the petition for a writ of habeas corpus. Petitioner's application for a stay of these proceedings is also denied.

A petitioner may not appeal this order to the Court of Appeals unless "a circuit justice or judge issues a certificate of appealability." 28 U.S.C.S. § 2253(c)(1) (LexisNexis 2008). A certificate will be granted, "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.S. § 2253(c)(2) (LexisNexis 2008); see United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997) (discussing standard for issuing a certificate of appealability). Because the Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not be issued. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore, in forma pauperis status is denied for the purposes of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully requested to enter judgment accordingly and close this case.

SO ORDERED.

Dated: New York, New York
August 14, 2013

/S
LAURA TAYLOR SWAIN
United States District Judge